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No. 94-1579

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

October Term, 1994

THE PEOPLE &C. *ex rel.* CHARLES E. COLLINS, III, on behalf of CHARLES SHUFELT,

Petitioner,

against

W. DENNIS DUGGAN,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO
THE NEW YORK STATE COURT OF APPEALS

BRIEF AND APPENDIX IN OPPOSITION

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Questions Presented

1. Whether this Court should review the dismissal of a petition for a writ of habeas corpus by a state court where the petition was filed *pro se* by a person who is not an attorney and who demonstrated neither authority to act for the detainee, nor the detainee's incapacity to act, nor a relationship to the detainee sufficient to warrant a filing on his behalf, nor any basis for the filing of a petition *pro se*.

2. In the event that this Court decides to address the substantive merits of the petition, whether sections 433 and 454 of the New York Family Court Act, which (1) permit child support proceedings to be held outside the public view in appropriate instances, and (2) permit a Family Court Judge, upon a determination after a hearing that a person is in willful contempt of a court's order of support, to jail the contemnor for a period of up to six months, violate the contemnor's right to a public criminal trial by jury pursuant to the Sixth Amendment.

Parties

The parties to the proceeding below were denominated by petitioner as follows:

1. Charles E. Collins III, petitioner and relator;

2. Charles Shufelt, detainee "on behalf of" whom the petition was filed;

3. W. Dennis Duggan, respondent.

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No. 94-1579

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

THE PEOPLE &C. *ex rel.* CHARLES E. COLLINS, III,
ON BEHALF OF CHARLES SHUFELT,

Petitioner,

v.

W. DENNIS DUGGAN,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO
THE NEW YORK STATE COURT OF APPEALS

BRIEF AND APPENDIX IN OPPOSITION

Statement of the Case

The petitioner and relator in this matter is Charles E. Collins; the petition is purportedly filed "on behalf of" Charles Shufelt. Neither Collins nor Shufelt are attorneys. The respondent is the Honorable W. Dennis Duggan, a Judge of the Family Court of the State of New York.

According to papers filed by petitioner in this matter, a child support proceeding was commenced against Shufelt before the Albany County Family Court pursuant to Article Four of the New York Family Court Act. On August 30, 1994, in the course of that proceeding, Family Court hearing examiner Mary Elizabeth Dunne determined after a hearing that Shufelt had "knowingly, consciously and voluntarily" disregarded prior support orders issued by the court pursuant to Family Court Act § 439(a), and issued a report setting forth such findings pursuant to Family Court Act § 439(e) (Petition, Exh 5, p 2). On October 7, 1994, Family Court Judge W. Dennis Duggan, referring to Shufelt's willful violation of earlier orders, issued an order pursuant to Family Court Act § 454(3)(a) requiring Shufelt to be committed to the Albany County Jail for a term of 16 consecutive weekends from Friday at 6:00 p.m. to Sunday at 6:00 p.m., commencing October 7, 1994 (Petition, Exh 4, p 1).

By petition sworn to on November 8, 1994, petitioner Collins commencing a proceeding *pro se* purportedly pursuant to Article 70 of the New York Civil Practice Law and Rules for a writ of habeas corpus before the New York State Supreme Court, Appellate Division, Third Department. The petition erroneously named Judge Duggan, who was at no time Shufelt's custodian, as respondent in the matter. *See,* New York Civil Practice Law and Rules § 7004(b) (petition should name as respondent the person having custody of the person detained). In the papers supporting this petition, Collins identified himself merely as a "friend" to Shufelt. He did not assert or demonstrate authority

to commence the proceeding on Shufelt's behalf.[1] Nor did he seek to explain why Shufelt himself, whose confinement was limited to weekends, could not make an application for relief on his own behalf. Finally, Collins provided no authority for his filing of a *pro se* petition for a writ on behalf of another.

The petition alleged that Judge Duggan, in committing Shufelt to serve a jail sentence for his contempt of the court's support order, had denied Shufelt his Sixth Amendment right to a public jury trial for a criminal offense, and further alleged that various sections of the New York Family Court Act were unconstitutional.

On December 14, 1994 the Third Department denied the petition for a writ (Petition, Exh 2).

Petitioner Collins appealed that denial to the New York State Court of Appeals. Again Collins failed to set forth any basis for his filing *pro se,* or for his actions purportedly on behalf of Shufelt, or to explain why Shufelt was unable to act on his own. Following review of submissions by the parties, the Court of Appeals dismissed the appeal *sua sponte* on February 16, 1995 upon the ground that the appeal did not directly involve a constitutional question.

Shufelt has apparently completed the sixteen-weekend jail sentence (Petition, p 29).

Petitioner subsequently filed a petition for a writ of certiorari.

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[1]Pursuant to Civil Practice Law and Rules § 7002(a),

> A person illegally imprisoned or otherwise restrained in his liberty within the state, or one acting on his behalf . . . may petition without notice for a writ of habeas corpus to inquire into the cause of such detention and for deliverance. . . .

SUMMARY OF ARGUMENT

Because petitioner Collins has demonstrated no authority or legal grounds for his commencement of this proceeding on behalf of Shufelt, and has failed to demonstrate that Shufelt cannot protect his own legal interests or that Collins has any basis for filing a *pro se* petition, the petition for writ of habeas corpus in the instant matter was properly dismissed, and this Court should not exercise its jurisdiction over this matter.

ARGUMENT

POINT I

Petitioner Collins lacks a sufficient legal interest to support a petition for writ of habeas corpus on behalf of detainee Shufelt or to file a petition *pro se* in this matter.

It is well established that a person may not seek a writ of habeas corpus on behalf of another merely on the basis of friendship or sympathy, or an interest in the legal issues involved in his case. "It was not intended that the writ of habeas corpus should be availed of, as a matter of course, by intruders or uninvited meddlers, styling themselves next friends." *United States ex rel. Bryant v Houston,* 273 F 915, 916 (CA2 1921). As this Court noted in its detailed discussion of "next friend" standing for application for a writ in *Whitmore v Arkansas,* 495 US 149, 163-64 (1990):

> "[N]ext friend" standing is by no means granted automatically to whomever seeks to pursue an action on behalf of another. Decisions applying the habeas corpus statute have adhered to at least two firmly

> rooted prerequisites for "next friend" standing. First, a "next friend" must provide an adequate explanation -- such as inaccessibility, mental incompetence, or other disability -- why the real party in interest cannot appear on his own behalf to prosecute the action. [Citations omitted.] Second, the "next friend" must be truly dedicated to the best interests of the person on whose behalf he seeks to litigate, [citation omitted], and it has been further suggested that a "next friend must have some significant relationship with the real party in interest. *Davis v Austin*, 492 F. Supp. 273, 275-276 (ND Ga. 1980) (minister and first cousin of prisoner denied "next friend" standing). The burden is on the "next friend" clearly to establish the propriety of his status and thereby justify the jurisdiction of the court. [Citations omitted.]

In the instant matter, petitioner Collins has failed utterly to make a showing of "next friend" status sufficient to provide standing to apply for a writ of habeas corpus on Shufelt's behalf. While Collins indicated in the petition that he is a "friend" to Shufelt, he provided no evidence that Shufelt ever sought or authorized his representation of Shufelt's interests. Collins has no legal training and has shown no special relationship to Shufelt. Most significantly, Collins has failed to demonstrate

that Shufelt, whose confinement was limited to weekends, was unable make an application for relief on his own behalf.[2]

Likewise, petitioner Collins, who is not an attorney, has cited no authority for the dubious proposition that he may act *pro se* on another's behalf in the filing of a habeas corpus petition.

For these reasons, the courts below properly concluded that Collins' petition for a writ of habeas corpus did not properly raise a constitutional issue worthy of their review, and denied the application for a writ of habeas corpus.

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[2]We note in passing that petitioner Collins has commenced numerous legal actions on his own behalf in the federal courts seeking to raise similar or identical issues to those here urged on Shufelt's behalf. *See, e.g., Collins v Carella,* 90-CV-1111 (NDNY October 25, 1990); *Collins v Austin,* No. 90-CV-138 (NDNY June 13, 1991), *affd,* 962 F2d 3 (2d Cir 1992); *Collins v Unified Court System of New York,* No. 91-CV-349 (NDNY, June 14, 1991), *affd,* 962 F2d 3 (2d Cir), *cert denied,* __ US __, 112 S Ct 1950, 118 L Ed 2d 554 (1992); *Collins v Morsillo,* No. 94-CV-884 (NDNY, September 17, 1994), *appeal docketed,* No. 94-9042 (2d Cir 1994). *See also, King v James,* No. 91-CV-952 (NDNY, November 29, 1991), *affd,* 969 F2d 1041 (2d Cir 1992), *cert denied,* __ US __, 113 S Ct 70, 121 L Ed 2d 36 (1992) (*pro se* action commenced by Collins' mother addressing, *inter alia,* constitutionality of various sections of Family Court Act on basis of facts arising from Collins' marital dispute); *King v Abrams,* No. 92-CV-1004 (NDNY February 20, 1993), *affd,* 9 F3d 1537 (2d Cir 1993), *cert denied,* __ US __, 114 S Ct 1220, 127 L Ed 2d 566 (1994) (same). Moreover, Collins has raised largely identical issues in his defense in a child support proceeding brought against him by his ex-wife. *See, Carella v Collins,* No F-60-85 (Saratoga County Family Court, December 29, 1994). Collins has appealed this latter decision, and the matter is currently awaiting perfection before the New York State Supreme Court, Appellate Division, Third Department.

POINT II

Petitioner Collins has made various misstatements of law and fact in the petition.

While we believe that petitioner Collins' constitutional challenge to various New York State statutes lies outside the proper scope of this Court's review, we believe as well that the challenge is meritless and is based on numerous misstatements of law and fact in the petition. Succinctly phrased, petitioner's central contention is that section 454 of the New York Family Court Act, which provide for imprisonment for a period up to six months in cases where a Family Court judge determines after a hearing that a person has willfully disobeyed an order of support, defines a form of criminal activity and requires a public jury trial pursuant to the Sixth Amendment (Petition, p 22). This is not the case.

Contrary to petitioner Collins' claim (Petition, p 9), imprisonment for contempt for a period in excess of 15 days does not constitute confinement for a criminal offense. Instead, it constitutes an exercise by New York Family Courts of their statutory power to ensure that judicial orders are obeyed. *Fuller v Fuller,* 31 AD2d 587 (3d Dept 1968) (imprisoning person pursuant to Family Court Act §§ 454, 156, and Judiciary Law § 753[3] is "solely for willful disobedience of the court's mandate)".

Petitioner Collins errs in his assertion that confinement for contempt following a hearing which may be held as a closed proceeding pursuant to Family Court Act § 433 constitutes "sentenc[ing] to jail in a secret trial" (Petition, pp 10, 11-18). Contrary to petitioner's suggestion, section 433 neither considers nor establishes the propriety of exclusion of the public from a

contempt proceeding over the contemnor's objection. Instead, that section merely declares that the public may be excluded from Family Court support proceedings in a proper case. In general, it is well established that confinement for contempt under Family Court Act § 454 may ensue only after a full evidentiary hearing in accordance with due process, including the opportunity to present witnesses and evidence in rebuttal. *Bruno v Bruno,* 50 AD2d 701 (3d Dept 1975); *Passonno v Passonno,* 43 AD2d 773 (3d Dept 1973). In the instant matter, there is no contention that Shufelt even requested that his contempt hearing be open to the public.

Petitioner Collins further errs in his claim that Family Court Act § 454 permits the court to impose upon a violator of a support order penalties of incarceration in excess of "six months ... or $5,000.00 fine or both" without a jury trial (Petition, pp 21-27). Instead, that section directs the Family Court, in response to a person's willful failure to comply with a support order, to compel the violator to pay arrears and attorney's fees; it also permits the court, in appropriate instances, to jail the violator for up to six months. It is well established that this imprisonment provision does not violate the Sixth Amendment. *United States ex rel. Griffin v Martin,* 409 F2d 1300 (2d Cir 1969) (imprisonment for up to six months under Family Court Act § 454 for contempt of support order does not infringe upon Sixth Amendment rights); *Brooke v Family Court of the State of New York,* 420 F2d 296 (2d Cir 1969), *cert denied,* 397 US 1000 (1970) (same);[3] *Baldwin v New York,* 399 US 66 (1970).

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[3]Petitioner's claim that the order of jail time in the instant matter (sixteen weekends), together with payment of $9,037.15 in arrears, "exceeds six months in jail or a $5,000.00 fine or both" (Petition, p 21) is simply wrong.

Petitioner Collins' claim that Family Court Act § 439 is unconstitutional because it is unauthorized under the New York State Constitution (Petition, pp 28-38) is erroneous. Nothing in the State Constitution bars the appointment of hearing examiners for Family Court proceedings. In any case, this claim improperly invokes this Court's jurisdiction to assert rights purportedly derived from the State Constitution rather than the Federal Constitution.

Finally, petitioner Collins' claims that section 439 denies contemnors due process because "a non-judicial employee is determining whether the litigant is guilty or innocent of the contempt charge" (Petition, p 29), and that hearing officers are unable to make a factual finding as to whether parties in support proceedings have willfully violated court orders (Petition, p 35), are incorrect. Family Court Act § 439(f) plainly provides for the selection of qualified hearing examiners for the Family Courts; section 439(a) empowers such examiners to conduct hearings and make any grant of relief under Article 4. Collins' claim that a qualified, court-appointed hearing examiner cannot make findings of fact precedent to issuance of a confinement order consistent with due process is unfounded and specious. Moreover, the statutory scheme at issue permits each party to have any such orders reviewed and ultimately decided by a Family Court judge. *See,* Family Court Act § 439(e). In the instant matter, Hearing Officer Dunne did not issue the order committing Shufelt to jail for contempt. Rather, that order was issued by Family Court Judge Duggan, after the parties had been given the opportunity to object to Hearing Officer Dunne's findings of fact as to Shufelt's willful failure to comply with prior orders (Petition, Exh 5, p 1). This procedure raises no constitutional concerns.

In sum, the New York State Court of Appeals rightly determined that petitioner's appeal, and the petition itself, raised no issue of constitutional dimension.

CONCLUSION

The Petition for a Writ of Certiorari should be denied.

Dated: Albany, New York
May 22, 1995

Respectfully submitted,

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Respondent's Appendix

Family Court Act § 156: Contempts

> The provisions of a judiciary law relating to civil and criminal contempts shall apply to the family court in any proceeding in which it has jurisdiction under this act or any other law, and a violation of an order of the family court in any such proceeding which directs a party, person, association, agency, institution, partnership or corporation to do an act or refrain from doing an act shall be punishable under such provisions of the judiciary law, unless a specific punishment or other remedy for such violation is provided in this act or any other law.

Family Court Act § 439(a):

> The chief administrator of the courts shall provide, in accordance with subdivision (f) of this section, for the appointment of a sufficient number of hearing examiners to hear and determine support proceedings. Except as hereinafter provided, hearing examiners shall be empowered to hear, determine and grant any relief within the powers of the court in any proceeding under this article, articles five and five-A, and sections two hundred thirty-four and two hundred thirty-five of this act, article three-A of the domestic relations law, and objections raised pursuant to section fifty-two hundred forty-one of the civil practice law and rules. Hearing examiners shall not be empowered to hear, determine and grant any relief with respect to issues specified in section four hundred fifty-five of this act, issues of contested paternity, custody, visita-

tion including visitation as a defense, and orders of protection or exclusive possession of the home, which shall be referred to a judge as provided in subdivision (b) or (c) of this section. A hearing examiner shall have the authority to make a determination that any person before the said examiner is in violation of an order of the court as authorized by section one hundred fifty-six of this act subject to confirmation by a judge of the court who shall impose any punishment for such violation as provided by law.

Family Court Act § 439(e):

The determination of a hearing examiner shall include findings of fact and a final order which shall be entered and transmitted to the parties. Specific written objections to such order may be submitted by either party to the court within thirty days after entry of the order. A party filing objections shall serve a copy of such objections upon the opposing party, who shall have thirteen days from such service to serve and file a written rebuttal to such objections. Proof of service upon the opposing party shall be filed with the court at the time of filing of objections and any rebuttal. Within fifteen days after the rebuttal is filed, or the time to file such rebuttal has expired, whichever is applicable, the judge, based upon a review of the objections and the rebuttal, if any, shall (i) remand one or more issues of fact to the hearing examiner, (ii) make with or without holding a new hearing, his or her own findings of fact and order, or (iii) deny the objections. Pending review of the objections and the rebuttal, if any, the order of the hearing examiner shall be in full force and effect and no stay of such

order shall be granted. In the event a new order is issued, payments made by the respondent in excess of the new order shall be applied as a credit to future support obligations. The final order of a hearing examiner, after objections and the rebuttal, if any, have been reviewed by a judge, may be appealed pursuant to article eleven of this act.

Family Court Act § 439(f):

The chief administrator shall promulgate written rules for the selection, appointment, reappointment, compensation and training of hearing examiners, who shall be attorneys admitted to the practice of law in this state for at least three years and who shall be knowledgeable with respect to the family court and federal and state support law and programs. Hearing examiners shall be appointed on a full-time basis for a term of three years and may be reappointed for subsequent terms, except that the rules promulgated hereunder may permit the appointment of an acting hearing examiner to serve during a hearing examiner's authorized leave of absence. Where it is determined that the employment of a full-time hearing examiner is not required, one or more counties may agree to share the services of a full-time hearing examiner or a hearing examiner may be appointed to serve within one or more counties on a part-time basis.

Family Court Act § 454(3):

Upon a finding by the court that a respondent has willfully failed to obey any lawful order of support, the court shall order respondent to pay counsel fees to the attorney representing petitioner pursuant to section four hundred thirty-eight of this act and may in

addition to or in lieu of any or all of the powers conferred in subdivision two of this section or any other section of law:

(a) commit the respondent to jail for a term not to exceed six months. For purposes of this subdivision, failure to pay support, as ordered, shall constitute prima facie evidence of a willful violation. Such commitment may be served upon certain specified days or parts of days as the court may direct, and the court may, at any time within the term of such sentence, revoke such suspension and commit the respondent for the remainder of the original sentence, or suspend the remainder of such sentence. Such commitment does not prevent the court from subsequently committing the respondent for failure thereafter to comply with any such order . . . .